

**PROPOSAL  
SPECIFICATIONS  
  
AND  
  
CONTRACT AGREEMENT  
  
FOR  
  
COLDPLANING – 2012  
FY12-500-88**



**CITY OF MANCHESTER  
DEPARTMENT OF HIGHWAYS  
  
2012**

MANCHESTER HIGHWAY COMMISSION

Raymond Hebert	Commissioner
Hall Sullivan	Commissioner
Rick Rothwell	Commissioner
Bill Skouteris	Commissioner
Philip Hebert	Commissioner

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Kevin A. Sheppard, P.E.	Public Works Director
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CITY OF MANCHESTER

New Hampshire

PROPOSAL

SPECIAL PROVISIONS

and

CONTRACT AGREEMENT

for

**COLD PLANING  
FY12-500-88**

**2012**

Prepared by

CITY OF MANCHESTER, NEW HAMPSHIRE

DEPARTMENT OF HIGHWAYS

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City of Manchester  
Department of Highways

228 Maple Street

Manchester, New Hampshire

INVITATION FOR BIDS

Sealed proposals will be received at the office of the Department of Highways of the City of Manchester, New Hampshire before or at **2:30 P.M.**, prevailing time on the **18th of May, 2012** for the following described services.

**COLD PLANING - 2012**  
**FY10-500-71**

This work consists of cold planing at several locations around the City.

Certified Check/Bid Bond \$20,000

Plans and specifications may be seen at the following locations:

- City of Manchester, Department of Highways, 228 Maple St., Manchester, NH 03103
- Dodge Reports, 880 Second Street., Manchester, NH 03102
- Associated General Contractors of N. H., 48 Grandview Road., Bow, NH 03304
- Works in Progress, 20 Farrell Street., Suite 103 South Burlington, VT 05403
- Construction Summary of NH, 734 Chestnut Street., Manchester, NH 03104

Specifications and proposal forms may be obtained at the Office of the Department of Highways. Inquiries may be directed to Bruce A. Thomas, P.E. at 624-6444, x305.

Proposals must be completed in both words and numerals on regular proposal forms, which shall be submitted in a sealed envelope marked: "Proposal for the **"COLD PLANING - 2012"** contract, addressed and delivered to the Department of Highways not later than the date and time mentioned above, at which time they will be publicly opened and read aloud.

Proposals must be accompanied by a Certified Check or Bid Bond in the amount listed above, payable to: "Department of Highways, City of Manchester, N.H.", as security for the execution of the contract.

The right is reserved to waive any informalities in or reject any or all proposals and to accept the bid that is deemed most favorable to the interest of the City of Manchester.

Department of Highways, City of Manchester, N.H.

By: MANCHESTER HIGHWAY COMMISSION

Raymond Hebert, Commissioner

Hal Sullivan, Commissioner

Rick Rothwell, Commissioner

Bill Skouteris, Commissioner

Philip Hebert, Commissioner

Kevin A. Sheppard, P.E., Public Works Director

## **STANDARD SPECIFICATIONS FOR ROAD, DRAIN & SEWER CONSTRUCTION**

These specifications are intended to relay to developers, contractors and other builders and trades, information concerning the Department of Highways' requirements relative to all construction under its jurisdiction in the City of Manchester, NH.

To facilitate this end, the Standard Specifications have been divided into three parts as follows:

### **PART I -- PUBLIC IMPROVEMENTS**

Part I of the Standard Specifications outlines the Department's requirements concerning public improvements included in site development and subdivision projects. These requirements shall also apply to off-site improvements conducted within streets, rights-of-way, easements or other public lands belonging to the City of Manchester, New Hampshire.

All work relative to the above shall be conducted according to Section V of this part and the Technical Specifications as outlined in Part III.

### **PART II -- CONTRACT GENERAL PROVISIONS**

Part II of the Standard Specifications outlines the Department's contractual requirements concerning work for road, drain and sewer projects along with other related work. These requirements shall apply to all such work contracted by the City of Manchester, Department of Highways and shall be considered a part of all proposals.

### **PART III -- TECHNICAL SPECIFICATIONS**

Part III of the Standard Specifications outlines the Department's detailed requirements concerning the control of material, rules of construction and basis of payment. Supplemental Specifications not yet considered standard and Special Provisions for explaining items of work unique to a specific project, will be included in the proposal forms prepared by the Department.

The sections included in this part along with any Supplemental Specifications and Special Provisions, shall be considered a part of all proposals.

**BID SECURITY:** The undersigned agrees to comply with the requirements as to the conditions of employment, wage rates and hours of labor set forth in the Form of "Contract Agreement". The undersigned hereby agrees to complete all the work shown or specified under this contract and as shown on the contract drawings as specified in the contract documents and he further agrees that the OWNER may retain from the moneys that are or which may become due an amount of two hundred dollars (\$200.00) plus engineering charges for each and every calendar day (Sunday and holidays excluded) of time consumed in completing the work beyond the time conditions stipulated above or any extension of time that is duly authorized and such amount so to be retained, is hereby agreed to be liquidated damages accruing to the OWNER incident to such delay.

The undersigned understands that the OWNER reserves the right to reject any and all bids and to waive any informalities in the bidding.

---

Contractor's Signature

---

Title

---

Date

Certificate of Acknowledgment of Contractor, if a Corporation

State of \_\_\_\_\_,

ss:

County \_\_\_\_\_,

On this \_\_\_\_\_ day of \_\_\_\_\_

20\_\_\_\_

before me personally came \_\_\_\_\_

to me known, who being duly sworn did say as follows:

that he resides at: \_\_\_\_\_

and is the \_\_\_\_\_

of \_\_\_\_\_

the corporation described herein and which executed the foregoing instrument; that he knows the corporate seal of said corporation; the seal affixed to the foregoing instrument is such corporate seal and it was so affixed by order of the Board of Directors of said corporation and by the like order, he signed thereto his name and official designation.

\_\_\_\_\_  
Notary Public (seal)

My commission expires: \_\_\_\_\_



PROPOSAL

COLD PLANING - 2012

The City of Manchester acting through its Department of Highways hereinafter called the "Awarding Authority", requests bids for the furnishing of all labor, equipment and materials required for the construction of the " **COLD PLANING - 2012**" contract in accordance with the plans and specifications prepared by the City of Manchester, Department of Highways.

The undersigned as Bidder declares that the only person or parties interested in this proposal as principals are those named herein; that this Proposal is made without collusion with any other firm, that the undersigned has carefully examined the location of the proposed work, the proposed form of contract and the plans and specifications therein referred to, and the undersigned proposes and agrees if this Proposal is accepted, he will contract with the "Awarding Authority" to provide all the necessary labor, machinery, tools, apparatus and other means of construction to do all the work and furnish all the materials specified in the contract in the manner and time therein described and according to the requirements of the Engineer therein set forth and the undersigned will take full payment therefore, the following unit and total prices:

_____	\$ _____
Total Price In Words	Total Price In Figures

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

It is agreed that the total price presented above, is to be used solely for the comparison of bids to determine the apparent low bidder.

PROPOSAL

The undersigned agrees that this Bid shall be good and may not be withdrawn for a period of ninety (90) calendar days after the scheduled closing time for receiving bids.

This Proposal includes Addenda No.:\_\_\_\_\_

\_\_\_\_\_  
Contractor (Bidder) (seal)

By:\_\_\_\_\_  
(Signature and Title)

Address:\_\_\_\_\_

\_\_\_\_\_

Being a (corporation incorporated)  
(under the laws of the )  
(State of \_\_\_\_\_)  
(Partnership, )  
(Individual )

Composed of Officers, partners, or  
owner, as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF MANCHESTER  
Department of Highways

INFORMATION REPORT

PROJECT: COLD PLANING - 2012

DATE BIDS OPENED: At 2:30 P.M., Friday, May 18, 2012

PROJECT TYPE: This work consists of cold planing and paving at several locations around the City.

CONTRACT PERIOD: The contract period for this project shall be 240 calendar days, beginning at the date of execution of the contract. The time frame for individual projects will be determined by mutually agreement between the Contractor and the City subject to conditions provided in the prosecution of work.

PROPOSAL GUARANTEE: \$20,000.00

## BID ITEM SHEET

This proposal shall be filled in by the bidder in ink with the prices written in both words and numerals and the extensions shall be made by him. Amount in words will govern.

**Due to limited funding for this project, the City of Manchester may delete any part of this work necessary to keep the expenditures within the limits of available funds. Alternatively, the City may add projects if additional funding becomes available.**

Bid Item Number	Estimated Quantity	Unit	Description (Bid Price in Words)	Unit Price (Bid in Figures)	Total Price (Bid in Figures)
417.12	121,500	S.Y.	Cold Planing 2.5 Inches of Bituminous Surfaces _____ dollars and _____ cents		
TOTAL = (in words)	_____ Dollars and _____ Cents			\$ _____	

Additive Alternate: Price for Additional Inch of cold planing thickness: \$ \_\_\_\_\_

Additive Alternate: 602.55 Adjusting Manhole Covers, and Catch Basin Frames (Per each):  
\$ \_\_\_\_\_

BID BOND: COLD PLANING - 2012

The undersigned as bidder, understands and agrees that the quantities of work as given for each item in this Proposal are only approximate and are assumed solely for the comparison of proposals. They are not guaranteed to be accurate statements or estimates of the quantities of work to be performed under this contract and any departures therefrom, will not be accepted as valid grounds for any claim or loss of profits. In case of variation between unit prices and total prices stated by the bidder, the unit prices will be considered to be his bid.

The undersigned further agrees to comply with the requirements as to conditions of employment, wage rates and hours of labor set forth in the form of Contract Agreement.

Accompanying this Proposal under separate cover is **Twenty Thousand Dollars (\$20,000.00)** in the form of a Bid Bond, Cashier's Check or Certified Check\* payable to the Department of Highways of the City of Manchester.

The undersigned understands that the OWNER reserves the right to reject any and all bids and to waive any informalities in the bidding.

\*Bidder will cross out words which do not apply.

_____ Contractor's Signature	_____ Date
_____ Title	

## PROSECUTION OF THE WORK

<b>Coldplaning Projects - 2012</b>		
LOCATION		SY
1	Goffstown Rd. – Kaunas Circle to Goffstown T.L.	9,514
2	Blucher St. – Conant St. to Putnam St.	6,298
3	Second St. – South Main St. to Arnold St.	15,980
4	Appleton Street	4,687
5	Union (Webster to Salmon)	4,280
6	Concord Street (Elm to Chestnut)	2,126
7	Hooksett Rd. – Beech St. to Campbell	26,897
8	West Haven Rd.	7,633
9	Edward Roy Drive - Wellington Rd to Hitchcock Way	6,161
10	Page Street - Hanover to Bridge Street Ext.	7,789
11	Eastern Ave. Old Wellington to 645-A-2	11,857
12	Gold St. – Calef Rd. to Beech St.	3,884
13	Huse Rd. – 293 overpass to Tilden Dr.	14,391
<b>Total:</b>		<b>121,496</b>

For each street, 2.5” of roadway will be cold planed, although the City reserves the right to have the Contractor coldplane a greater thickness at the cost per additional thickness provided on the bid sheet. All work shall conform to the Standard Specifications for Road, Drain & Sewer Construction.

The City may choose to have the Contractor adjust manhole and catchbasin frames and grates, thus a unit price cost is requested. The cost assumes no more than 1’ of adjustment from bottom of frame to bottom of adjusted brick.

The services of Police Officers for traffic control will be provided by the City as specified in the supplemental specifications. The Contractor shall be responsible for conducting his work in a safe, satisfactory manner. Any costs in connection with maintenance of traffic, will be considered incidental to the contract.

The Contractor should note that the intent of this contract is that the resulting roadway surfaces shall flush with all existing pedestrian ramps.

Due to limited funding for this project, the City of Manchester reserves the right to delete any part of this work in order to keep the expenditures within the limits of available funds.

### **Work Schedule**

The Contractor shall adjust his work schedule with that of the Highway Department, although every effort will be made to combine projects of similar location.

Coldplaning will be done early in the week (typically Monday through Wednesday).

### **Two Way Traffic**

The Contractor will be required to maintain two way traffic on all streets at all times unless provisions have been made with the Highway Department. Detours onto adjacent parallel streets will be considered on a case by case basis.

### **Public Convenience and Property Protection**

The Contractor shall be aware that he will be required to maintain access to all properties in the project area at all times.

Permits required from the Highway Department shall be furnished without charge. All work to be performed shall be in compliance with the City of Manchester Ordinances or as specified on the permit itself.

The Contractor's attention is directed to the fact that all work shall conform to the Standard Specifications for Road, Drain and Sewer Construction of the Manchester Department of Highways, and the Standard Specifications for Road and Bridge Construction of the New Hampshire Department of Transportation.

The cost for each Item shall cover all labor, materials, parts and other incidentals required to perform the work.

Prior to the start of work, the Contractor will provide the City with an insurance certificate with the City of Manchester and the Highway Department named as additional insured. The certificate shall meet all requirements of the Standard Specifications for Road, Drain and Sewer Construction of the Manchester Department of Highways.

**Due to limited funding for this project, the City of Manchester intends to delete any part of this work necessary to keep the expenditures within the limits of available funds.**

### **Contract Period:**

The contract period for this project shall be 240 calendar days, beginning at the date of execution of the contract. The time frame for individual projects will be determined by mutually agreement between the Contractor and the City.

## **SUPPLEMENTAL SPECIFICATION**

### **SECTION 417 -- COLD PLANING OF BITUMINOUS SURFACES**

#### **Description**

**1.1** This work shall consist of the removal of existing bituminous pavement by planing or milling type equipment to the depth and grade shown on the plans or ordered. Equipment

#### **Equipment**

**2.1** Equipment used for planing of bituminous surfaces shall be a power operated rotary planing or milling machine capable of uniformly removing the existing bituminous surfaces.

#### **Construction Requirements**

**3.1** The existing bituminous surface shall be removed by planing or milling machine capable of removing in one or more passes, bituminous material to the depth specified. The equipment shall be capable of accurately establishing profile grades by an automatic grade control system referencing from either the existing pavement or from an established independent grade line.

**3.1.1** The equipment shall have an effective means for controlling dust.

**3.3** The Contractor shall supply sufficient lighting to ensure that night cold planning operations meet the requirements of 3.1 and allow for inspection.

#### **Method Of Measurement**

**4.1** Cold planing of bituminous surfaces as shown on the plans or ordered will be measured by the square yard as determined by the actual surface measurements of the lengths and widths of the bituminous areas removed.

#### **Basis Of Payment**

**5.1** The accepted quantities of cold planing bituminous surfaces to the nominal depth specified, will be paid for at the contract unit price per square yard.

#### **Pay Item and Unit:**

417.11	Cold Planing of Bit. Surfaces (Full Service)	Square Yard
417.12	Cold Planing of Bit. Surfaces (Coldplane only)	Square Yard



## CONTRACT AGREEMENT

THIS AGREEMENT made this \_\_\_\_**th day of** \_\_\_\_, **A.D. 2012** by and between the City of Manchester, New Hampshire acting through its Department of Highways, hereinafter called the party of the first part and \_\_\_\_\_, their successors and assigns, part of the second part, hereinafter called the Contractor. Witnesseth, that the Contractor, for and in consideration of the payment or payments herein specified and agreed to by the party of the first part, hereby covenants and agrees to furnish and deliver all the materials and to do and perform all the work and labor in the construction of the **Cold Planing - 2012** contract hereinafter called the project, in the City of Manchester, County of Hillsborough, State of New Hampshire at the unit prices bid by the said Contractor for the respective estimated quantities, aggregating approximately the sum of: \_\_\_\_\_ (\$\_\_\_\_\_) and such other items as are mentioned in the original proposal, which proposal and prices named, together with the General Provisions and Technical Specifications and the Special Provisions accompanying the proposal, and made a part of this Contract and accepted as such, are also agreed by each party as being a part hereof, the said project being situated as follows:

**Various locations as listed in the Prosecution of the Work and as agreed upon between the Contractor and the City.**

The Contractor further covenants and agrees that all of the said materials shall be furnished and delivered and all of said labor shall be done and performed in every respect to the satisfaction and approval of the Department of Highways aforesaid, within The contract period for this project shall be **240 calendar days, beginning at the date of execution of the contract. The time frame for individual projects will be determined by mutually agreement between the Contractor and the City.**

CITY OF MANCHESTER  
(SEAL)

DEPARTMENT OF HIGHWAYS

By \_\_\_\_\_  
Kevin A. Sheppard, P.E.  
Director of Public Works

Signed and sealed in  
presence of:

\_\_\_\_\_

\_\_\_\_\_

Date

CONTRACTOR

(SEAL)

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

Federal I.D. No.

NOTARIZATION

Certificate of Acknowledgment of Contractor, if a Corporation

State of New Hampshire,

ss:

County of Hillsborough,

On this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2012

before me personally came \_\_\_\_\_

to me known, who being duly sworn did say as follows:

that he resides at: \_\_\_\_\_ and is the

\_\_\_\_\_ of \_\_\_\_\_ the corporation

described herein and which executed the foregoing instrument; that he knows the corporate seal of said corporation; the seal affixed to the foregoing instrument is such corporate seal and it was so affixed by order of the Board of Directors of said corporation and by the like order, he signed thereto his name and official designation.

\_\_\_\_\_  
Notary Public (seal)

My commission expires:\_\_\_\_\_

## STATEMENT OF UNDERSTANDING

### Project Safety

WHEREAS this project is subject to all Safety and Health Regulations as promulgated by the U.S. Department of labor, it shall be a requirement that the Contractor designate a "Safety Officer" who's duty shall be to monitor the project on a daily basis in order to insure that all safety measures alluded to in the contract and otherwise pertinent to this project, are strictly adhered to. Special attention shall be paid to maintaining existing guide, regulatory and warning signs affecting the movement of traffic.

IT IS hereby agreed that responsibility for the above mentioned safety measures is solely that of the Contractor and that an individual has been designated as the project "Safety Officer".

COMPANY

\_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATEMENT OF COMPLIANCE  
Drug Testing Program

WHEREAS this project is subject to federal laws, rules and regulations, and WHEREAS all drivers of commercial vehicles over 26,000 pounds GVWR are required to have a Commercial Drivers License (CDL), it is hereby certified that the Alcohol and Drug Testing requirements for Commercial Motor Vehicle Drivers mandated by the Federal Highway Administration, United States Department of Transportation are being complied with.

COMPANY

\_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we \_\_\_\_\_  
\_\_\_\_\_ a \_\_\_\_\_ hereinafter  
called the "Principal" and \_\_\_\_\_ of \_\_\_\_\_, State  
of \_\_\_\_\_ hereinafter called the "Surety", are held and firmly  
bound  
unto THE CITY OF MANCHESTER, NEW HAMPSHIRE, hereinafter called "Owner",  
in the penal sum of (\_\_\_\_\_) in lawful money of the United  
States, for the payment of which sum well and truly to be made, we bind ourselves, our  
heirs, executors, administrators and successors, jointly and severally, firmly by these  
presents.

THE CONDITIONS OF THIS OBLIGATION is such that WHEREAS, the Principal  
enter into a certain contract with the Owner, dated the (Date) copy of which is hereto  
attached and made a part of hereof for the construction of:

**"COLDPLANING - 2012"** in accordance with drawings and specifications prepared by  
the City of Manchester, N.H. which contract is by reference made a part hereof, and is  
hereinafter referred to as the Contract.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties,  
all the undertakings, covenants, terms, conditions and agreements of said contract during  
the original term thereof, and any extensions thereof which may be granted by the  
Owner, with or without notice to the Surety, and if he shall satisfy all claims and  
demands incurred under such contract, and shall fully indemnify and save harmless the  
Owner from all costs and damages which it may suffer by reason of failure to do so, and  
shall fully reimburse and repay the Owner for all outlay and expense which Owner may  
incur in making good any default, then this obligation shall be void; otherwise to remain  
in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and  
agrees that no change, extension of time, alteration or addition to the terms of the  
contract or to the work to be performed thereunder, or the specifications accompanying  
the same, shall in any way affect its obligation on this bond, and it does hereby waive  
notice of any such change, extension of time, alteration or addition to the terms of the  
contract or to do the work or to the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor  
shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed and original, this the \_\_\_\_ day of \_\_\_\_\_ 2012.

ATTEST:

\_\_\_\_\_  
Principal

\_\_\_\_\_(S)  
(Principal)

\_\_\_\_\_  
(Seal) By \_\_\_\_\_(S)

\_\_\_\_\_(S)  
Witness as to Principal

\_\_\_\_\_  
Address

ATTEST:

\_\_\_\_\_  
Surety

\_\_\_\_\_(S)  
(SURETY) By \_\_\_\_\_(s)  
\_\_\_\_\_  
Attorney-in-Fact

(SEAL)  
\_\_\_\_\_(S)  
Witness to Surety

\_\_\_\_\_  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Address

Note: Date of Bond must not be prior to date of Contract.

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_

\_\_\_\_\_ as Principal, hereinafter called Principal, and  
\_\_\_\_\_ as surety, hereinafter called Surety, are held and firmly  
bound unto THE CITY OF MANCHESTER, NEW HAMPSHIRE, as obligee, hereinafter  
called Owner, for the use and benefit of claimants as herein below defined, in the amount  
of ( \_\_\_\_\_ ) for the payment where of  
Principal and Surety bind themselves, their heirs, executors, administrators, successors  
and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement, dated \_\_\_\_\_, **2012** entered into a  
contract with Owner for the construction of " **COLDPLANING – 2012**" in accordance  
with drawings and specifications prepared by the City of Manchester, N.H. which  
contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms,  
subcontractors, and corporations furnishing materials for or performing labor in the  
prosecution of the work, provided for in such contract, and any authorized extension or  
modification thereof, including all amounts due for materials, lubricants, oil, gasoline,  
coal and coke, repairs on machinery, equipment and tools consumed or used in  
connection with the construction of such work, and all insurance premiums on said work,  
and for all labor, performed in such work, whether by subcontractor or otherwise, then  
this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received, hereby stipulates and  
agrees that no change, extension of time, alteration or addition to the terms of the  
contract or to the work to be performed thereunder, or the specifications accompanying  
the same shall in any way affect its obligation on this bond, and it does hereby waive  
notice of any such change, extension of time, alteration or addition to the terms of the  
contract or to do the work or the specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor  
shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one  
of which shall be deemed and original, this \_\_\_\_\_ **day of** \_\_\_\_\_, **2012**

ATTEST: \_\_\_\_\_ Principal



\_\_\_\_\_(Principal)

(Seal) By \_\_\_\_\_(S)

\_\_\_\_\_

By: \_\_\_\_\_Witness as to Principal(s)

\_\_\_\_\_

\_\_\_\_\_Address

\_\_\_\_\_Surety

ATTEST: By \_\_\_\_\_Attorney-in-Fact(s)

\_\_\_\_\_ (Surety)

(Seal)

By: \_\_\_\_\_(S)

Witness as to Surety

\_\_\_\_\_

Note: Date of Bond must not be prior to date of Contract.